



AMERICAN
INTERNATIONAL
AUTOMOBILE
DEALERS
ASSOCIATION

211 NORTH UNION STREET
SUITE 300
ALEXANDRIA, VA 22314
PH. 703.519.7800 FX 703.519.7810
goaiada@aiada.org www.aiada.org

December 9, 2002

DEC 09 2002

VIA HAND DELIVERY

Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

**RE: AIADA Comments on Notice of Proposed Rulemaking Regarding the
Telephone Consumer Protection Act of 1991.
CG Docket No. 02-278**

Dear Sir or Madam:

The American International Automobile Dealers Association (AIADA) is the national trade association representing the nearly 10,000 American automobile dealers who hold franchises for international nameplate automobiles.

On behalf of the more than 420,000 American workers who sell and service these fine automobiles and trucks we are pleased to have the opportunity to submit these comments regarding the Telephone Consumer Protection Act of 1991 (TCPA).

I. Unsolicited Facsimile ("fax") Advertisements

In response to the FCC's proposal to seek comments on the continued effectiveness of the TCPA as it relates to the prohibition of unsolicited telephone facsimile advertisements, AIADA supports these regulations as they protect the consumer from any inconvenience or disruption. AIADA is concerned, however, by the increase in lawsuits seeking "class action" on behalf of individuals who have received unsolicited faxes.

It is AIADA's concern that the pursuit of class action is an abuse of the statute's original intent, which was designed to provide reasonable legal recourse on the part of the individual in small claims court. Recent class action suits brought

No. of Copies rec'd Q18
List ABOVE

about as a result of unsolicited faxes have resulted in excessive penalties on the advertisers and are disproportionate to the alleged offense. Recently a dealer in Illinois was hit with a class action lawsuit under the TCPA, and received a \$6,000,000 judgment against him. All because a fax broadcast vendor sent unsolicited faxes. Of course, the entity that actually sent the faxes is either out of business, bankrupt or marginally solvent. One dealer in Colorado has a pending claim of \$850,000,000.00 against him under the exact same facts.

Clearly, AIADA believes that this was not the intent of the statute or the FCC. As such, the FCC should specifically prohibit the use of class action lawsuits brought under the TCPA based on concern that the remedy far exceeds the alleged injury. The increased likelihood of bankruptcy as a result of a class action lawsuit "remedy" far exceeds the scope of the original penalty as stated by the TCPA.

II. Fax Broadcasters

Members of AIADA use a variety of means to advertise in their communities, including telephone facsimile solicitations. Typically a dealer is contacted by one or more fax broadcast companies offering to solicit customers within a given area code. In many instances, the fax broadcast company provides its own list. In those instances the dealer has no knowledge of the individuals who may or may not be on the list. In other cases, the dealer may provide the list, but the fax broadcasting company does the actual faxing. With no liability under the current law, the broadcasting company may or may not eliminate certain individuals from the list.

AIADA believes that the legal responsibility should run to the entity that actually performs the act of sending the fax. It is only fair and reasonable that the liability flow with the entity performing the actual illegal act. Absent such a requirement, there is no legal burden placed on the fax broadcasting provider as it relates to complying with the TCPA.

Currently, there is no liability imposed on the fax broadcaster. AIADA believes this invites potential abuse on the part of the fax broadcaster when considering the benefits to the broadcaster who is accepting compensation based on the number of faxes sent. There is no incentive for the broadcaster to disclose the regulations set by TCPA because there is no risk of liability.

AIADA asks that the fax provider be required to provide the business owner full disclosure as to the scope of the requirements and penalties of the TCPA, as

AIADA Comment to FCC
December 9, 2002
Page three of three

well as those individuals or entities who have requested elimination from the solicitation list.

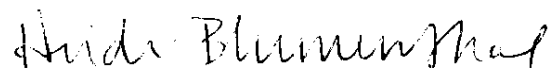
III. Conclusion

AIADA appreciates the FCC's efforts to consider revising the TCPA and the regulations issued thereunder in order that consumers receive effective and efficient protection from unsolicited and/or unwanted faxes. AIADA makes the following recommendations to the FCC in order to preserve the objective of the TCPA:

1. Prohibit the use of class action lawsuits as brought under the TCPA. The remedy of a class action lawsuit far exceeds the injury and could potentially result in bankruptcy and/or loss of business.
2. Require fax broadcasters to provide written disclosure of the limitations and guidelines that apply to fax advertisements according to the TCPA, as well as an indication of those individuals or entities who have indicated that they do not wish to be solicited before entering into a written agreement with a business advertiser.

Should you have any questions, please feel free to call Heidi Blumenthal or Judith Ostronic at 703-519-7800.

Sincerely,



Heidi Blumenthal
Director, Legislative Affairs



Judith Ostronic
Director, Legislative Affairs